

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1176 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-
MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 -No

JENABHAI KHODABHAI SALAT

Versus

STATE OF GUJARAT

Appearance:

MR BS SUPEHIA for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/03/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

The appellant, undergoing sentence under Sec.302 of Indian Penal Code recorded by learned Additional Sessions Judge, Nadiad on 16-11-1997 in Sessions Case No.276 of 1996, has preferred this appeal.

#. With a view to give full opportunity to the learned advocate appearing for the appellant, we have called for the record. Not only that, but we adjourned the matter to enable him to go through the record to his satisfaction. We have perused the record and proceedings of the case.

#. The appellant and one Chimanbhai Babubhai Salat are alleged to be the persons responsible for causing death of the deceased Dinaben and for causing injury to one Kamlaben who is a prosecution witness at ext.29.

#. The appellant got married with deceased and they were staying near the house of Bharmalbhai, father of the deceased. Before about 13 days from the date of incident, one Somiben, daughter of Ambalal, who happens to be the brother of Bharmalbhai also came there to reside. On 9-6-96, said Somiben informed that from Village Vasna, Chimanbhai, who happens to be the brother-in-law of deceased Dinaben, came to the house. They took supper and appellant was telling the deceased that as his father is sick, they should go to Village Vasna. However, deceased Dinaben was not willing to go. As per the prosecution case, appellant and his brother Chimanbhai were sleeping outside the house. In the early morning, Daksha, daughter of deceased, raised a cry as a result of which, Somiben and Kamlaben were awoken. They saw the appellant causing injury on vital part of the person of Dinaben. Witness Kamlaben intervened, as a result of which, she also sustained injury. Deceased died on the spot. It appears that, thereafter said Bharmalbhai conveyed the information to one Govindbhai at Ralaj and thereafter, complaint came to be filed. The appellant-accused was absconding. However, on 18-6-1996, the appellant was arrested and was forwarded to Hospital. The Police, on coming to the conclusion that there is prima facie case against the accused, submitted the charge-sheet against the accused in the Court of Judicial Magistrate (First Class), who committed the accused to the Court of Sessions. On framing the charge, accused pleaded not guilty. On appreciation of evidence recorded by the learned Additional Sessions Judge and on hearing the submissions made by the learned counsel, learned Judge trying the accused acquitted the original accused No.2 and convicted the appellant-accused No.1 against which the present appeal is preferred.

#. Learned advocate arguing the appeal after going through the record, submitted that the accused gave a complaint to the Police. Vide ext.70, the appellant's

case is that on the date of incident, son of Mafatbhai came with a view to have intercourse with the deceased. He awakened the deceased. As a result of this, accused scolded said boy which ultimately resulted in quarrel and ultimately said outsider, delivered a blow on the person of accused and thereafter on the person of deceased by a knife, and thereafter, the person ran away and accused lodged the complaint at Cambay Police Station. Learned advocate submitted that as he was enraged and the boy ran away from the place and ultimately the accused lost balance of his mind, he caused injuries to the deceased and therefore, at the most, it would be a case under Sec.304 part II of Indian Penal Code and in any case, appellant cannot be convicted for the offence punishable under Sec.302 of Indian Penal Code.

#. Learned Judge has discussed the evidence of eye witnesses, namely Sumitraben and Kamlaben. Kamlaben's presence is not disputed. Even Sumitraben's presence is also not disputed and her presence is natural. The suggestion put to the witness that one boy came near Dinaben-deceased has been denied. It is required to be noted that appellant and his brother Chimanbhai-accused were sleeping outside the room. Learned advocate could not point out as to from which place the outsider could have entered the room. It is clear that the appellant has alleged that deceased had an illicit relation with another person. Therefore, it might be in his mind that deceased is keeping illicit relations with another person and at the available opportunity, he has used the weapon on the person of the deceased. From the evidence, it appears that there was insistence on his part to take the deceased to Village Vasna and deceased was refusing to accompany the accused.

#. It is clear from the evidence that in one cot appellant and his brother were sleeping and in another cot deceased and her daughter Daksha were sleeping. Evidence of Sumitraben reveals that the appellant delivered a blow by means of an axe and when Kamlaben intervened, she was also given a blow. Kamlaben has supported the say of prosecution. There is no dispute about the place, identity or the incident. Witnesses have not admitted the presence of an outsider. Prosecution has led sufficient evidence to point out the incident and the manner in which it took place. Suggestion has no foundation at all. Learned advocate could not point out anything from evidence to create a doubt, a reasonable doubt, about the presence of an outsider.

#. Learned Judge has accepted the evidence of eye witnesses and learned advocate even after going through the record could not point out any material to indicate that the evidence is not acceptable.

#. Learned advocate submitted that the accused was injured and therefore, his defence is probable that the boy who came at the time of occurrence caused the injury and thereafter ran away. It is required to be noted that accused was absconding and at any point of time he might have sustained injury. Name of the boy is not known to the accused. However, he is aware of the name of father of the boy and the name of grandfather of that boy. From the evidence, it clearly transpires that the evidence is corroborated by medical evidence. There is no reason to discard the evidence of Sumitraben and Kamlaben and the complaint filed by the accused subsequently is found to be false. The complaint is lodged immediately after the occurrence wherein name of the accused and witnesses are disclosed. The witnesses are also near relatives and have no reason to falsely implicate the accused. There is no dispute about the fact that they were residing at the place where incident took place.

##. In view of what is stated hereinabove, it is not possible for us to agree with the submissions made by the learned counsel for the appellant that it is an offence punishable under Sec.304 part II of Indian Penal Code. We have perused the record and we are in agreement with the view taken by the trial Judge and therefore, we do not discuss the evidence in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

##. In the result, appeal stands dismissed.

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